

Criminal Procedure

Indigent's Right to a Trial Transcript

State v. Tyson, __ N.C. App. __, __ S.E.2d __ (May 15, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMDc4LTEucGRm>). The trial court committed reversible error by denying the defendant's request for a trial transcript for use in his retrial. After a mistrial, the trial court set a retrial for the following day. The defendant objected, arguing that he needed a trial transcript before the retrial. The trial court denied the defendant's request and the defendant was convicted at the retrial. Equal protection requires the State to provide indigent defendants with the basic tools of an adequate defense—including a trial transcript—when those tools are available for a price to other defendants. A two-step test applies for determining whether a transcript must be provided to an indigent defendant: (a) whether the transcript is necessary for an effective defense and (b) whether there are alternative devices available to the defendant that are substantially equivalent to a transcript. Here, the trial judge stated in part that he did "not find that the anticipation or the speculation that a witness may get on the stand and alter their testimony to be sufficient basis to delay a trial so that a transcript can be produced." These findings are insufficient. The trial court's ruling that the defendant's asserted need constituted mere speculation that a witness might change his or her testimony would apply in almost every case and a defendant would rarely if ever be able to show that a witness would in fact change his or her testimony. The trial court's ruling makes no determination why this defendant had no need for a transcript, especially in light of the fact that the State's case rested entirely on the victim's identification of the defendant as the perpetrator. Although the trial court indicated that it could take "measures" or had "means" to protect the defendant's rights, without any explanation of what those measures or means would be, this is insufficient to establish that there were alternative devices available that were substantially equivalent to a transcript.

Jury Instructions

State v. Rollins, __ N.C. App. __, __ S.E.2d __ (May 15, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS05NjktMS5wZGY=>). The trial court's jury instruction regarding the duty to reach a verdict did not coerce a guilty verdict. The relevant pattern instruction (N.C.P.I.--Crim. 101.35), based on G.S. 15A-1235(a), reads: "All twelve of you must agree to your verdict. You cannot reach a verdict by majority vote. When you have agreed upon a unanimous verdict(s) (as to each charge) your foreperson should so indicate on the verdict form(s)." Here, the trial court instructed: "You must be unanimous in your decision. In other words, all twelve jurors must agree. When you have agreed upon a unanimous verdict, your foreperson may so indicate on the verdict form that will be provided to you." The defendant argued that telling the jurors that they had to agree, rather than that they had to agree to a verdict, caused the jurors to erroneously construe the charge to be a mandatory instruction that a verdict must be reached. Although it concluded that the "pattern instruction more carefully instructs the jury," the court found that the instruction in this case, when viewed in context, was not coercive of the jury's verdict.

Evidence

Standard of Review

State v. Houseright, __ N.C. App. __, __ S.E.2d __ (May 15, 2012) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xNDkwLTEucGRm>). The court held that questions of relevance are reviewed de novo but with deference to the trial court's ruling.

State v. Rollins, __ N.C. App. __, __ S.E.2d __ (May 15, 2012) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS05NjktMS5wZGY=>). Following *Houseright* and holding that the court reviews "questions of relevance de novo although we give great deference to the trial court's relevancy determinations."

404(b) Evidence

State v. Houseright, __ N.C. App. __, __ S.E.2d __ (May 15, 2012) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xNDkwLTEucGRm>). In a child sex case involving a female victim, the trial court did not err by admitting 404(b) evidence in the form of testimony from another female child (E.S.) who recounted the defendant's sexual activity with her. The evidence was relevant to show plan and intent. Because the defendant's conduct with E.S. took place within the same time period as the charged offenses and with a young girl of similar age, it tends to make more probable the existence of a plan or intent to engage in sexual activity with young girls. Additionally, the defendant's plan to engage in sexual activity with young girls was relevant to the charges being tried. Finally, there was no abuse of discretion under the Rule 403 balancing test. On the issue of similarity, the court focused on the fact both E.S. and the victim were the same age and that the defendant was an adult; there was no discussion of the similarity of the actual acts.

State v. Rollins, __ N.C. App. __, __ S.E.2d __ (May 15, 2012) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS05NjktMS5wZGY=>). (1) In a second-degree murder case stemming from a vehicle accident during a high speed chase following a shoplifting incident, details of the shoplifting incident were properly admitted under Rule 404(b). Evidence is admissible under Rule 404(b) when it is part of the chain of circumstances leading to the event at issue or when necessary to provide a complete picture for the jury. Here, the shoplifting incident explained the manner of the defendant's flight. (2) The trial court did not err by admitting evidence that the defendant received two citations for driving without a license, including one only three days before the crash at issue. The fact that the defendant drove after having been repeatedly informed that driving without a license was unlawful was relevant to malice. The court rejected the defendant's argument that admission of the "bare fact" of the citations violated the *Wilkerson* rule (bare fact of a conviction may not be admitted under Rule 404(b)). The court noted that *Wilkerson* recognized that conviction for a traffic-related offense may "show the malice necessary to support a second-degree murder conviction," because it was "the *underlying evidence* that showed the necessary malice, not the fact that a trial court convicted the defendant." Thus, the court concluded, *Wilkerson* does not apply. (3) The trial court did not err by admitting an officer's testimony of the defendant's conduct after the crash. The

evidence suggested that the defendant was continuing to try to escape regardless of the collision and in callous disregard for the condition of his passengers and as such supports a finding of malice.

Opinions

State v. Rollins, __ N.C. App. __, __ S.E.2d __ (May 15, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS05NjktMS5wZGY=>). No plain error occurred in a second-degree murder case stemming from a vehicle accident after a police chase when officers testified that the defendant committed the offense of felony speeding to elude arrest and other crimes. The officer's testimony was a shorthand statement of facts necessary to explain why the police chase ensued. Specifically, the officers testified that they were not allowed to give chase unless they observed felonious conduct. Following *State v. Anthony*, 354 N.C. 372, 408 (2001), the court held that the officers were not interpreting the law for the jury, but rather were testifying regarding their observations in order to explain why they pursued the defendant in a high-speed chase.

Criminal Offenses

Homicide

State v. Rollins, __ N.C. App. __, __ S.E.2d __ (May 15, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS05NjktMS5wZGY=>). In a second-degree murder case stemming from a vehicle accident, there was sufficient evidence of malice. The defendant knowingly drove without a license, having been cited twice for that offense in the three weeks prior to the accident. When the original driver wanted to pull over for the police, the defendant took control of the vehicle by climbing over the back seat and without stopping the vehicle. He was attempting to evade the police because of a large volume of shoplifted items in his vehicle and while traveling well in excess of the speed limit. He crossed a yellow line to pass vehicles, twice passed vehicles using a turn lane, drove through a mowed corn field and a ditch, and again crossed the center line to collide with another vehicle while traveling 66 mph and without having applied his brakes. To avoid arrest, the defendant repeatedly struck an injured passenger as he tried to get out of the vehicle and escape.

Robbery

State v. Williamson, __ N.C. App. __, __ S.E.2d __ (May 15, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8wOS0xNDc1LTlucGRm>). In an armed robbery case, the trial court did not err by failing to instruct the jury on common law robbery and by denying the defendant's motion to dismiss armed robbery charges. Because there was no evidence that the gun was inoperable or unloaded, there was no evidence to rebut the presumption that the firearm was functioning properly.